

As you are all aware, President Joe Biden issued two executive orders regarding vaccine mandates for American workers. One specifically mandated federal employees to be vaccinated, postal employees were excluded. The second directed OSHA to issue new regulations that will require businesses with 100 or more employees to get vaccinated against the coronavirus. Since these executive orders were issued, the APWU has been monitoring vaccine mandates and the legal challenges that have been filed against states, cities, or companies that have instituted mandates.

Some points to note, on July 6, 2021, the Office of Legal Counsel for the US Department of Justice issued an opinion on whether or not public or private entities are prohibited from imposing vaccination requirements. The [18-page document](#) stated that the vaccine mandates are not prohibited under the law. Prior to that, United States Equal Employment Opportunity Commission (EEOC) issued guidance on vaccinations in the workplace. The December 2020, guidance can be found [here](#). It was also updated in May 2021. The EEOC also determined that under EEO laws, employers are not prohibited from requiring employees who physically enter a workplace be vaccinated, subject to reasonable accommodation provisions of the law. Reasonable accommodation can be granted due to a medical reason/disability for not being able to get vaccinated, a sincerely held religious belief, practice, or observance. However, a company is not required to accommodate if the accommodation causes an undue hardship on an employer or causes a “direct threat” to the health and safety of other workers in the workplace. (See section K.5 of the EEOC guidance).

In reference to the legal challenges to COVID-19 vaccine mandates, one must first look at what the United States Supreme Court has historically said about vaccine mandates. To do that we must go back to 1905—116 years ago. In *Jacobson v. Massachusetts*, the court ruled that a state can mandate vaccines, and accompany those vaccine mandates with a criminal fine for those not in compliance. More broadly, the court ruled that the state can impose “reasonable regulations” to protect the public health, even when such regulations interfere with individual rights. The text of that ruling can be found here: <https://supreme.justia.com/cases/federal/us/197/11/>. In more recent cases, the Court refused to block a mandate issued for students of Indiana University. This case was an appeal of the 7<sup>th</sup> Circuit Court of Appeals [four-page decision](#) affirming the University’s mandate as legal. This ruling relied heavily on *Jacobson v. Massachusetts*. Again, citing *Jacobson*, a federal court in Texas rejected a class of employees’ lawsuit against a hospital for requiring vaccinations. The case was dismissed, and the mandate was found legal. [Bridges, et al. v. Houston Methodist Hospital et al.](#)

The courts are still continuing to rule in favor of mandates. In New York, a state court lifted a restraining order that had prevented New York City from implementing vaccine mandate on public school staff. In the five-page order, the judge ruled that municipal unions petitioning to stop the mandate are unlikely to prevail and noted that the public’s health interests outweigh the interests of the petitioners. The judge wrote, “The state and federal courts have consistently held that a mandatory vaccine requirement does not violate substantive due process rights and properly fall within the State’s police

power.” *New York City Municipal Labor Committee et al. v. the City of New York et al.* A news article on this case is attached. Regarding the same mandate, a federal court rejected requests for a temporary restraining order in *Maniscalco et al. v. NYC Department of Education et al.* Again, a story is attached. Late Monday night (September 27, 2021) a three-judge panel for the 2nd District US Court of Appeals rejected appeals by *Maniscalco et al* and allowed the mandate to go into effect.

In Massachusetts, a state court judge rejected the police union’s attempt to block the Governor’s vaccine mandate for executive branch employees in the state of Massachusetts. In *State Police Association of Massachusetts v. Commonwealth of Massachusetts et al.*, the judge ruled that “Suspending the deadline for union members to obtain full vaccination would be against the public interest which the defendants are charged with protecting.” The judge did note in the decision that the union has an interest in bargaining over the mandate’s **terms**. Article attached.

One ongoing legal case that is still working its way through the courts is *Sambrano et al v. United Airlines, Inc.* An article is attached on this case as well. United Airlines is taking the position that any employee with a medical or religious exemption cannot be accommodated and are being put on leave. United is taking the position that these exemptions cannot be accommodated because any accommodation would be a “undue hardship” that create a “direct threat” to the health and safety of the other employees and United customers. A hearing is set on this case for October 8, 2021, in the US District Court, Northern District of Texas.

We bring these all to your attention as the subject of mandates continue to permeate our daily lives. The APWU encourages all Postal Employees who are eligible and medically able, receive one of the available vaccinations. The data and science clearly show that the vaccine slows the spread, prevents severe illness, and greatly reduces deaths due to COVID-19 amongst the vaccinated.

Please Disseminate

*Vance Zimmerman*

Industrial Relations Director